IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO.149 OF 2006
IN
WRIT PETITION NO.37 OF 2002

Shri Subhash Mahadev Alatekar .. Appellant
v/s.
The Divisional Controller,
Maharashtra State Transport,
Kolhapur Division, Kolhapur .. Respondent

Mr.S.V.Sadavarte for the appellant.

CORAM : R.M.LODHA &
S.J.VAZIFDAR, JJ.

DATED : 18TH JULY, 2006.

P.C.

We heard Mr.S.V.Sadavarte, counsel for the appellant.

2. The appellant was employed as Conductor with the Maharashtra State Transport Corporation (for short, `the corporation'). In the year 1991, he is said to have met with an accident resulting into disorder of his spinal chord. He was sent for

the medical examination to the Medical Officer who certified that due to the injuries sustained by him and the medical disorder, he was not fit to work as Conductor. Thereafter recatagorisation of the appellant as peon was sanctioned. Since the post of peon was not vacant, he was absorbed as cleaner with effect from 18.12.1992. The appellant accepted the post of cleaner. The petitioner then filed complaint of Unfair Labour Practice before the Industrial Court, Kolhapur. The complaint came to be dismissed on 6.11.2001. Aggrieved thereby, the appellant filed writ petition before this court which came to be dismissed by the learned Single Judge vide order dated 29th July, 2002. Hence, the present appeal.

3. Having considered the matter thoughtfully, we are of the view that the complaint of unfair labour practice filed by the appellant before the Industrial Court was wholly misconceived. It is not in dispute that the appellant was medically unfit to continue as Conductor. The recatagorisation of the appellant as peon was sanctioned but since the post of peon was not vacant, he was offered the job of cleaner which he accepted without demur. Having accepted the job of cleaner and continued to work as such for quite some time, it was not proper on the part of the appellant in alleging that the Corporation has indulged in unfair labour practice. If the appellant thought of joining the post of peon alone, he ought to have waited until the vacancy occurred but he accepted the post of cleaner which was offered to him. There was no unfair labour practice committed by the management. The impugned orders do not warrant any interference by us in the Letters Patent Appeal.

Appeal is dismissed in limine.

(R.M.LODHA, J.)

(S.J.VAZIFDAR, J.)